the ground to defend just in case I was attacked. When we went to the coffee shop where the assault took place, we did not bring along any changkol handle or parang.

The pin table was placed in the said coffee shop by my proprietor named Chin Yan Kee only a few days ago.

The male Chinese Lim Ah Chai was assaulted by my colleagues because it was suspected that he had broken the pin table in order to take the money as this had happened in the past."

The learned president after referring to the facts of the case for the prosecution stated in reference to the cautioned statement as follows:—

"In itself the statement is not proof of the guilt of the accused. This is so, as the statement is not always true and it must be checked in the light of the whole of the evidence in order to see if it carries any weight to the accused's guilt. In this case I go no further than to say that it was not made in breach of any rules of positive law and therefore admissible in evidence. This seems more particularly so, as after I had called on the accused to make his defence he elects to remain silent."

The learned president quoted a passage from the judgment of Raja Azlan Shah J. in *Public Prosecutor* v. *Sundravelu* [1] to the effect that in a charge for possession of offensive weapon under section 6(1) of the Ordinance, the burden is on the accused to prove that he possessed the weapon for a lawful purpose at the time when he was found to be in possession.

The learned president then went on to state that both P.W.1 and P.W.2 had testified seeing the accused with the parang in his hand, but unfortunately, the learned president had failed to refer to the part of the appellant's cautioned statement whereby he explained how he came into possession of the parang and the reason why he took possession of it. In this respect the learned president also failed to consider the evidence of P.W.4, who stated that when the appellant and the others entered into the shop that she did not see any of them carrying anything else except a bag of tools.

It is true, that under section 6(1) of the Ordinance the burden is on the accused to prove that he possessed a weapon for a lawful purpose at a time when he was found to be in possession.

In my view the law is quite clear, that where a burden is placed on an accused person to prove anything, by statute or common law, that burden is only a slight one and that this burden can be discharged by the evidence of the witnesses for the prosecution as well as by the evidence for the defence.

In this case the prosecution itself put in the cautioned statement as part of its case against the appellant. The appellant's explanation as to how he came into possession of the parang in the absence of any other evidence contradicting or varying it, should in my view be accepted as reasonably true and would in the circumstances be sufficient to discharge the burden placed on him under section 6(1), or would be sufficient to raise a reasonable doubt in the mind of the learned trial president as to whether the appellant possessed the weapon for an unlawful purpose.

For these reasons I would therefore say that she should have given the appellant the benefit of that doubt and should have acquitted him.

I would therefore allow the appeal and set aside the conviction and sentence.

Appeal allowed.

Solicitors: *Nadchatiram Bros.*

K. CHELLARAM & SONS (F.E.) LTD. v. NISSHO SHIPPING CO. LTD. AND THE PORT OF SINGAPORE AUTHORITY

[O.C.J. (Buttrose J.) June 23, 1967]

[Singapore — Civil Suit No. 1280 of 1965]

Shipping — Carriage of goods by sea — Goods discharged by carriers — Custody by Port Authority — Failure of delivery — Liability of carriers — Liability of Port Authority — Cesser of liability of carriers upon discharge — Relief from liability of Port Authority under Ordinance — Port of Singapore Authority Ordinance, 1963, ss. 88(1) & (2), 89, 96(1), 128(2) and 131.

Bills of lading — Cesser of liability of carriers upon discharge — Conflict with Hague Rules — Severance — Hague Rules, Art. III, r. 8.

The plaintiff claimed damages against the first defendant for breach of contract of carriage of 3 cases of goods by sea and/or conversion, and in the alternative against the second defendant for negligence in the custody and care of the 3 cases of goods. The parties stated a special case for the opinion of the court. The first defendant accepted the shipment of 5 cases of goods and agreed to deliver the same at Singapore to order and to the order of the Bank of India, Ltd. respectively. The contract evidenced by the bills of lading were subject to the Hague Rules. The goods were duly shipped and discharged ex ship's tackle by the first defendant into the possession of the second defendant. When plaintiff who for the purpose of this special case it was agreed at all material times was the owner of the goods and the endorsee of the bills of lading, presented delivered orders to the second defendant the second defendant delivered to the plaintiff only two cases of the goods. The first question was whether on the facts stated and on the construction of section 88(2) of the Port of Singapore Authority Ordinance, 1963 (hereinafter referred to as the Ordinance), the second defendant was relieved of liability to the plaintiff. The second question was whether on the facts and on the true construction of the bills of lading and of section 88(1) of the Ordinance the first defendant was relieved of liability to the plaintiff.

Held: (1) on the true construction of section 88(2) of the Ordinance the second defendant was relieved of all liability to the plaintiff. The legal position prior to the coming into force of the Ordinance was that the person or body into whose custody a carrier discharges his goods would be liable in tort in an action for damages for negligence. Section 88 is not concerned with placing liability on anybody. The Ordinance under Part X deals with the limitation of the Port Authority's liability. The concept of agency was brought in so that the

second defendant would be able to say that it was an agent. It was not introduced to enable liability for the second defendant's wrong doing to be placed on an innocent carrier. The Legislature having freed the wrong doer *i.e.* second defendant from the consequence of its own wrong doing, this loss must fall where it lies. The plaintiff must be taken to be aware of the provisions of section 88 of the Ordinance and it is open to him to make provision for it by insuring the goods, the premium being adjusted according to the risk involved. Section 88 was designed to free the second defendant from all liability whatever and nothing else and does not impose liability on the carriers nor seek to do so;

(2) clause 15 of the bills of lading provide for cesser of liability of the first defendant upon discharge. In so far as clause 15 purport to apply before the discharge is completed the provisions come into conflict with Article III r. 8 of the Hague Rules and are null and void and of no effect. However, the clause contemplates the other possibility of discharge onto the quayside by ship's tackle which is not offensive to the Hague Rules. On the true construction of clause 15, the possibilities can be severed and the carrier is afforded complete protection.

Cases referred to:—

(1) *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Company, Ltd.* [1909] A.C. 369.

(2) *Svenska Trakt Akt.* v. *Maritime Agencies (Southamption) Ltd.* [1953] 2 Q.B. 295 at 301.

(3) *Renton* v. *Palmyra* [1956] 1 Q.B. 462.

CIVIL SUIT.

M. Karthigesu for the plaintiff.

A. P. Godwin (*J. Grimberg* with him) for the first defendant.

T. H. A. Potts for the second defendant.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiff claimed damages from the 1st defendant for breach of contract or duty in and about the carriage of 3 cases of goods (hereinafter referred to as 'the said 3 cases') by sea and/or conversion and in the alternative against the 2nd defendant for negligence in the care and custody of the said 3 cases and for wrongfully detaining and/or converting the same. The parties concurred in stating questions of law arising therein in the form of a special case for the opinion of the court under Order XXXIII of the Rules of the Supreme Court, 1934.

The special case is as follows:—

"1. By two bills of lading No. KS-25 and KS-37 both dated the 15th October 1964 (hereinafter called 'the said bills of lading') the first defendant acknowledge the shipment by Iwai & Co. Ltd. of Osaka on the first defendant's vessel *'Shohaku Maru'* (hereinafter called 'the vessel') at Kobe of the 5 cases therein mentioned (hereinafter referred to as 'the said goods') and agreed to deliver the same at Singapore to order and to the order of The Bank of India Ltd. respectively. Copies of the said bills of lading are annexed hereto as Appendices A & B and form part of this case. The said goods included the said 3 cases.

2. The contracts evidenced by the said bills of lading were subject to all the terms provisions and conditions of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on August the 25th 1924 (hereinafter referred to as 'the Hague Rules').

3. The said goods were duly shipped as aforesaid and the said vessel arrived in Singapore and docked alongside Godowns 40 and 41 of the second defendant on the 7th of November 1964.

4. For the purpose of this special case and not otherwise it is agreed that the plaintiff was at all material times the owner of the said goods and was further the endorsee of the said bills of lading to whom the property in the said goods passed upon or by reason of such endorsement.

5. For the purpose of this special case and not otherwise the said goods are to be regarded as having been duly discharged ex ship's tackle by the first defendant into the possession of the second defendant between the 7th November and the 11th November 1964.

6. On the 12th November 1964 the plaintiff presented delivery orders issued by the first defendant in respect of the said goods to the second defendant and on such representation the second defendant delivered to the plaintiff two cases out of the said goods but failed to deliver the said 3 cases.

7. The said 3 cases have never subsequently come into the possession of the plaintiff nor has the plaintiff recovered any part of the value of the said 3 cases. The said 3 cases have not been destroyed or damaged after they were delivered into the possession of the second defendant as aforesaid, but save as aforesaid the second defendant is unable to account for the same.

8. The second defendant is a corporate body established under the Port of Singapore Authority Ordinance, 1963. Certain By-Laws have been made by the Singapore Harbour Board, the predecessor of the second defendant, under the Ports Ordinance, and to the extent that they were validly made remain in force under section 128(2) of the said Ordinance of 1963 despite the repeal of the said Ports Ordinance by section 131 of the said Ordinance of 1963. The parties shall be at liberty to refer to the said Ordinance of 1963 (hereinafter called 'the Ordinance') and to the said By-Laws (hereinafter called 'the By-Laws') for their full terms and effect. The plaintiff shall be at liberty to challenge the validity of any of the By-Laws, including By-Law 34(1) hereinafter referred to, as being *ultra vires* the said Singapore Harbour Board and therefore invalid.

9. For the purposes of this special case and not otherwise it is agreed that the said goods were not transhipment goods within the meaning of section 88(3) of the Orinance and that the said goods were not accepted for storage pursuant to section 96(1) of the Ordinance. It is further agreed for the purposes of this special case and not otherwise that at no time was the first defendant personally or the first defendant's servants party or privy to any failure to exercise reasonable care in relation to the said goods or their safe keeping that the discharge of the said goods by them into the possession of the second defendant was a proper action on their part and that the second defendant was the only person into whose possession the first defendant could lawfully discharge the said goods.

10. The bills of lading contain certain provisions purporting to define the beginning and end of the first defendant's responsibility for the goods. The parties shall be at liberty to refer to the said and all other provisions of the bills of lading for their full terms and effect.

11. It is agreed that:—

(a) the total value of the said 3 cases was at all material times $7,272.39;

(b) no declaration of the nature and value of the said goods was at any time made pursuant to section 88(2)(b) of the Ordinance;

(c) no contract was made pursuant to section 89 of the Ordinance;

(d) no special application form was at any time executed and none of the said three cases was specifically and separately handed over pursuant to By-Law 34(1)(A)(a) or (b) of the By-Laws;

(e) no agreement was made pursuant to Article IV rule 5 of the Hague Rules fixing another maximum amount beyond that therein stated, and the maximum liability under the said rule is to be taken as $857.14 (£100) in respect of each of the said 3 cases.

12. The questions for the opinion of the court are:—

First Question

Whether on the facts stated and on the true construction of section 88(2) of the Ordinance the second defendant is relieved of liability to the plaintiff in respect of the said 3 cases.

Second Question

Whether on the facts stated and on the true construction of the bills of lading and section 88(1) of the Ordinance the first defendant is relieved of liability to the plaintiff in respect of the said 3 cases.

13. If the court shall be of opinion in the affirmative in regard to the first question then this action shall be dismissed as regards the plaintiff's claim against the second defendant.

14. If the court shall be of opinion in the affirmative of the second question then this action shall be dismissed as regards the plaintiff's claim against the first defendant.

15. If the court shall be of opinion in the negative of the second question and affirmative of the first question then judgment shall be entered in this action against the first defendant for the sum of $2,570.

16. If the court shall be of the opinion in the negative to the first question irrespective of the opinion of court on the second question judgment shall be entered in this action against the second defendant alone for such sum as the court shall consider to be the correct sum having regard to the provisions of Part X of the Ordinance."

The bills of lading state that the said goods are shipped in apparent good order and condition by the shipper Iwai & Co., Ltd. to be delivered at Singapore to the consignee named, namely, to the order of The Bank of India Ltd. and in any event the carrier's responsibility shall commence when the goods are taken on board the ship and cease when the goods leave the ship's deck and/or tackle.

The bills of lading have a number of conditions and exceptions (hereinafter referred to as 'clauses') endorsed on the back of them and in addition to the general exempting provision on the face of the bills of lading to which I have just referred, clause 15 provides as follows:—

"15. *Discharge and Delivery:* The goods may be discharged, without notice, as soon as the ship is ready to unload and as fast as she is able, continuously day and night in any weather, Sundays and holidays included, on to wharf or quay or into warehouse, or into lighter or craft or any other place, and be stored thereat and/or sent to store or warehouse; any custom of the port to the contrary notwithstanding, and always subject to the regulations and conditions of such wharf or quay, warehouse, hulk, lazaretto, lighter or craft or spaces, whether belonging to the carrier or not.

The carrier or the master shall have liberty to deliver the goods either from the ship's tackles or from hulk, lazaretto, store ship, lighter or craft or custom-house or warehouse, dock, quay, or any other place. The consignee must take necessary steps for receiving his goods before the ship's discharge and take away package by package, without delay, when they are ready to be delivered to him, whether the goods, or any part thereof, be sound or damaged, either from the ship's tackle or from hulk, lazaretto, store ship, lighter or craft, or custom-house or warehouse, dock, quay or any other place, any custom of the port to the contrary notwithstanding. In any case, all risks and expenses (including expenses for landing, lighterage, storage, cartage, etc.) incurred by delivery otherwise than from ship's tackles shall be borne by the owner of the goods; and the responsibility of the carrier or the ship shall cease as soon as the goods are lifted from and leave the ship's deck and/or ship's tackles, notwithstanding any custom of the port to the contrary and/or any special arrangement as to expenses beyond the ship's side.

The carrier or the ship does not undertake to furnish heating, refrigerating, cooling or other special facilities of any kind during loading or discharge of the goods, and shall not be liable in any respect whatsoever for lack of any such facilities. The carrier or the ship does not undertake to discharge and/or deliver the goods at any special wharf or place at the port of discharge, destination or transhipment, at any particular time, or to meet any particular market or use. If the goods are delivered to or taken into the custody of the officials of the Customs or other Government Authorities, such action shall constitute full discharge of the carrier's obligations hereunder and no claims for shortage or damage shall be considered except those clearly noted by such officials upon the receipt of the goods, but the carrier's lien on the goods shall survive such action."

There is a governing clause — clause 27 — which provides that the bills of lading and the contracts evidenced by them shall be construed and governed by Japanese Law, or may, at the carrier's option, be applied thereto the Hague Rules in whole or in part.

Then follows the paramount clause — clause 28 — which is as follows:—

"28. *Paramount Clause*: The bill of lading shall have effect subject to the provisions of any Maritime Act, Ordinance, Rules or Regulations in force which have been enacted in order to incorporate the 'Hague Rules' Convention above referred to at the place of issuance of the bill of lading, and/or subject to such provisions in force at the port of loading, as the case may be, and in case any of such Act, Ordinance Rules or Regulations enforced at the place of destination to inward cargoes thereto, the provisions thereof shall be paramount.

Nothing herein contained shall be deemed to be a surrender of any of the carrier's rights and immunities or an increase of his responsibilities or liabilities under such Act, Ordinance, Rules or Regulations. The carrier shall be entitled to the full benefit of all such privileges, rights and immunities as contained in the said Act, Ordinance, Rules and Regulations, whether they are in the absence of the conditions and exceptions herein contained or not.

Goods carried by the ship to any port in the United States of America and delivered in the United States, or goods carried by the ship from any port in the United States are subject to the provisions of the Carriage of Goods by Sea Act, 1936 of the U.S.A. If, or to the extent that, any term of the bill of lading is repugnant to or inconsistent with anything in the above-mentioned Act, Ordiance, Rules or Regulations, which shall apply to the bill of lading, it shall be void."

At the commencement of the hearing, Mr. Karthigesu for the plaintiff company intimated that, with reference to paragraph 8 of the case, he was abandoning his argument challenging the validity of the By-Laws including By-Law 34(1) made under the Singapore Harbour Board Ordinance as being *utlra vires* and therefore invalid.

At the conclusion of the hearing I answered the first question in the case in the affirmative as, in my view, on the true construction of section 88(2) of the Port of Singapore Authority Ordinance, 1963 (No. 36 of 1963) (hereinafter referred to as 'the Ordinance') the 2nd defendant was relieved of all liability to the plaintiff in respect of the said 3 cases and I dismissed the plaintiff's claim against the 2nd defendant with costs.

Section 88 of the Ordinance in so far as it is material to the present case is as follows:—

"88. (1) The Authority and any person duly authorised by it shall, in respect of any goods other than transhipment goods deposited with or placed in the custody or control of the Authority for the purpose of shipment or delivery, be deemed to be the agent of the owner of the vessel loading or discharging such goods irrespective of whosoever pays or is liable to pay any rates in respect of such goods.

(2) Neither the Authority nor any person duly authorised by it shall, in acting as an agent under the provisions of subsection (1) of this section, be liable —

(a) either in damages or in any other respect for any loss caused to any person by reason of short delivery of any goods deposited with or placed in the custody or control of the Authority or any failure by the Authority to deliver or account for the same; or

(b) for damage to, or destruction of, such goods in a sum of more than two thousand dollars per package or unit unless the nature and value of the goods contained therein have, prior to delivery to the Authority, been declared in writing to the Authority by the person delivering or causing the same to be delivered, and the Authority shall not in any event be liable therefor where the value of any such goods has been mis-stated or where there prevails any of the circumstances set out in section 91 of this Ordinance."

Mr. Karthigesu in opening his argument indicated that it was necessary to consider the liability of the 1st and 2nd defendants before the Ordinance became law. The carrier's liability being governed by the bills of lading and the Hague Rules which are incorporated in the bills of lading — see clauses 27 and 28 thereof.

Considerable argument was addressed to me on this question and as to the position of the 2nd defendant *vis-a-vis* the 1st defendant and as to whether the 2nd defendant was an agent, bailee or independent contractor.

In view of the conclusions at which I have arrived in this case it is unnecessary to embark on an examination of the authorities to which I was referred nor do I consider any useful purpose would be served by doing so.

Suffice it to say that the true legal position prior to the coming into force of the Ordinance appeared to be:—

(1) That the carrier's responsibility under the Hague Rules ceases on the discharge of the goods from the ship;

(2) That the carrier by his contract of carriage has a further duty of effecting delivery to the consignee;

(3) That the carrier can rely on the exemption clause in the bills of lading where loss or damage occurs after discharge and before delivering except in the case of a fundamental breach;

(4) That no relationship of principal and agent exists as between the carrier and the person or body into whose custody the carrier discharges the goods neither is that person or body a bailee — he is an independent contractor.

The person or body into whose custody a carrier discharges his goods would be liable in tort in an action for damages for negligence.

On the facts as agreed in the special case the 1st defendant would not be liable as all the said goods were discharged from the ship and as the 2nd defendant cannot account for the said 3 cases the 2nd defendant is liable in an action in tort for detinue or conversion.

This it was submitted was the position prior to the coming into force of the Ordinance.

Has this situation been changed by sections 88 and 89 of the Ordinance?

It was maintained on behalf of the plaintiff company it had and the first important change, it was said, was that the relationship of principal and agent as between the 1st and 2nd defendants had been statutorily established by section 88(1) of the Ordinance. The second change was that when the 2nd defendant was acting as agent for the purposes of delivery it was not liable for any loss after the goods have been deposited with it under section 88(2)(a).

Mr. Godwin submitted that section 88 was quite unprecedented and it is indeed a remarkable piece of legislation in that it relieves the 2nd defendant from the consequences of its own wrongs and I do not think this position was ever seriously challenged. While, according to Mr. Potts for the 2nd defendant, there may have been good reasons for introducing this legislation the question of whether, under present conditions, its continued retention is justified is another matter and one which, in my view, should have the careful consideration of the appropriate authority.

Mr. Karthigesu contended that it was not the intention of the Legislature that an innocent party such as the consignee who has paid value for his goods be left without recourse at all but

by the same token, so it seems to me, it was not the intention of the Legislature to place liability for the 2nd defendant's wrong doing on an innocent carrier.

Section 88 is not, in my view, concerned with placing liability on anybody else. It appears in the Ordinance under Part X thereof which is headed "Liability of the Authority", i.e. The Port of Singapore Authority, and deals with the limitation of the Authority's liability. The notion or concept of agency was brought in so that the 2nd defendant would be able to say it was only an agent. It was not introduced to enable liability for the 2nd defendant's wrong doing to be placed on an innocent carrier.

As Mr. Godwin pointed out the court here has the unenviable task of deciding which of two innocent parties must bear the loss, the actual wrong-doer having escaped.

The Legislature having freed the wrong-doer i.e. the 2nd defendant from the consequences of its own wrong doing the loss, must in the view I take, fall where it lies. The Singapore importer, the plaintiff company, in this case must be taken to be aware of the provisions of section 88 of the Ordinance and it is open to him to make provision for it by insuring his goods, the premium being adjusted according to the risk involved.

The plaintiff company also invoked in aid the provisions of section 89 of the Ordinance. Although by section 88(2)(a) of the Ordinance protection is given to the agent (the 2nd defendant) the Legislature, so it was said, has left it open for arrangements to be made by the ship owner and the 2nd defendant so that the vicarious liability of the principal may be shifted to the agent and for the agent to be responsible for the losses. This it was submitted was the true effect of section 89 of the Ordinance. The Legislature so it was argued contemplated that unless the agent by a contract with the principal accepts responsibility for losses caused while the goods are in the custody of the agent the principal will be vicariously liable. If no such contract, and there is none here, liability, it was maintained, must rest with the carriers.

For the 1st defendant it was contended that with regard to section 89 no carrier could ever enter into such a contract because the rate is excessive.

Be that as it may, I have come to the conclusion that section 88 was designed to free the 2nd defendant from all liability whatever and nothing else and does not impose liability on the carriers nor seek to do so.

Furthermore the bills of lading contain a limitation or exclusion of liability in clause 15 thereof which irrespective of and apart from section 88 of the Ordinance altogether is, in my view, conclusive against the plaintiff in so far as any loss occurs after the discharge of the goods.

In the case of *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Company, Limited* [1] the facts were that goods were shipped on board the defendants' ship to be carried to Penang and delivered there to order or assigns under bills of lading which contained the condition that "in all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee". They were delivered to landing agents appointed by the defendants, and for that purpose had been discharged from the ship's tackle into lighters sent by the agents, but by fraud, in which the agents participated, never reached the consignees. The case went to the Privy Council where it was held that although there had been no delivery under the bills of lading, yet the provision as to cesser of the defendants' liability directly the goods were free of the ship's tackle was perfectly clear, and that it must be held to be operative and effectual to protect them.

It is true that this case was decided before the Hague Rules came into operation but they have no application after the goods have been discharged and have not altered the rights of a carrier to exclude liability after discharge. In any event there is nothing objectionable to such a condition under the Hague Rules. Article VII thereof says as much and the learned author of *Carver's* Carriage by Sea, 11th Edn. vol. I (British Shipping Laws vol. 2) at p. 253 considers the provision unnecessary as the Hague Rules apply only from loading to discharge. Once the goods were discharged from the 1st defendant's ship the Hague Rules ceased to affect the matter and the position of the parties was governed by the contract of carriage and not affected by section 88 of the Ordinance. Neither the cargo owner nor the carrier is affected by the statute.

A further question which arises to be considered is as to whether the provisions as to cesser of the 1st defendant's liability under clause 15 of the bill of lading are capable of applying before completion of the operation of discharge and if they do whether or not on that account they are nullified by the Hague Rules.

Article III rule 8 provides that:—

> "Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.
>
> A benefit of insurance or similar clause shall be

deemed to be a clause relieving the carrier from liability."

It was submitted by Mr. Karthigesu that the bills of lading contemplate two possibilities:

1. If discharged by ship's tackle then responsibility ceases when the goods leave the ship's tackle;
2. If discharged by shore cranes then responsibility is to cease when the goods are lifted from and leave the ship's deck.

In the former i.e. discharge by ship's tackle the operation of the duty ends when the goods are deposited on the quayside.

In the latter the operation ends not when the goods are lifted from and leave the ship's deck as they still have to be placed on the quayside.

As according to Mr. Karthigesu, the provisions as to cesser of the 1st defendant's liability purport to apply before discharge is completed they come into conflict with Article III rule 8 above and are null and void and of no effect. Any provision which attempts to relieve the carrier from liability before the goods have been discharged is nullified by the Hague Rules.

If the provision as to lifting from and leaving the ship's deck by shore cranes is offensive to the Hague Rules, the discharge on to the quayside by ship's tackle is not and the question arises as to whether they are severable.

In *The Svenska Traktor Atk.* v. *Maritime Agencies (Southampton) Ltd.*[2] at p. 301 Pilcher J. considered it possible in a clause consisting of two parts to sever that part which does not offend against the Rules and merely strike out the offending part.

McNair J. however in *Renton* v. *Palmyra* [3] at pp. 477, 478 on the question whether it is permissible to 'blue pencil' and delete only the offending provision said:—

"The words of Article III rule 8 'any clause, covenant or agreement' are quite precise and do not, as I think, permit of any such process of revision in a case where the Act and Rules apply as a matter of law; and where as in this case the Act and Rules apply as a matter of contract and the parties have not in the incorporation clause used language such as 'if and to the extent that any terms of this bill of lading are repugnant to or inconsistent with the Act or Rules such term is void' (as in the *Svenska Traktor* case *supra*) I see no method of construction by means of which such process of revision can take place."

The case went to the Court of Appeal and thence to the House of Lords and while reversing the decision of McNair J. on other grounds expressed no opinion on this matter.

In my opinion on the true construction of clause 15 the two are severable and as the discharge on to the quayside by ship's tackle is not repugnant to or inconsistent with the Hague Rules the carrier is afforded complete protection.

In view of these findings it is unnecessary to deal with the other matters raised in argument by Mr. Grimberg and I refrain from doing so.

In the result, therefore, I answer the second question in the special case like the first in the affirmative and the plaintiff's claim against the 1st defendant must be dismissed with costs.

Claim dismissed.

Solicitors: *Allen & Gledhill; Drew & Napier; Rodyk & Davidson.*

PHANG MOH SHIN v. COMMISSIONER OF POLICE & ORS.

[O.C.J. (Buttrose J.) June 27, 1967]

[Singapore — Civil Suit No. 7 of 1965]

Administrative Law — Police Force — Dismissal of detective police constable — Disciplinary proceedings — Breach of "audi alteram partem" rule — Real likelihood of bias — Contravention of Police Regulations and General Orders — Void — Police Regulations, 1959, Part III, 7(5) & (6), 9 — Police General Order 403(27).

Police — Disciplinary proceedings — Dismissal — Police Regulations and General Orders — Contravention of.

Domestic Tribunal — Rules of evidence — Natural justice.

The plaintiff sought a declaration that his dismissal from the Singapore Police Force was void, inoperative and of no effect on three grounds: (a) breach of the "*audi alteram partem*" rule, (b) bias, and (c) the disciplinary proceedings were not held in accordance with the Police Regulations or General Orders. A complaint against the plaintiff was made by a member of the public and as a result of a preliminary investigation a disciplinary offence was disclosed and it became necessary to charge the plaintiff in accordance with the Police Regulations, 1959. The third defendant was delegated to conduct the disciplinary proceedings. There was sharp conflict of evidence as to when the plaintiff was first informed of the charge. The court however arrived at the conclusion that the plaintiff was first charged at the commencement of the disciplinary proceedings on May 13, 1963. During the proceedings the charge was read to the plaintiff but no copy of it was supplied to him either before, at or during the proceedings. Plaintiff's request for an adjournment to prepare his defence was refused. The third defendant had before him the investigation papers, plaintiff's service sheet and personal record, miscellaneous files containing complaints concerning the plaintiff's behaviour which were unconnected with the charge and a previous conviction on an extortion charge which was quashed on appeal. All these were taken into consideration by the third defendant in arriving at his decision and in making his recommendations. The contents of these documents were not disclosed to plaintiff and he was never given an opportunity of answering or explaining them. Furthermore, the third defendant had been previously the plaintiff's senior officer and had direct charge and control over him and would thus have access to his personal file and service sheets.

Held: (1) the plaintiff was not given adequate notice to meet and answer the charge. Even if plaintiff was charged on Friday or Saturday there was totally inadequate notice to meet and answer the charge on the following Monday bearing in mind that the week-end had all but arrived and the plaintiff was on 24 hour